In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:	
WILLIAM VERNON ALLDREDGE MELODY LYNN ALLDREDGE (Chapter 7 Case 92-20017)	Adversary Proceeding Number 93-2020
Debtors	
WILLIAM VERNON ALLDREDGE MELODY LYNN ALLDREDGE	
Plaintiffs	
v.	
LOAN SERVICING CENTER, HIGHER EDUCATION ASSISTANCE FOUNDATION, and VAN RU CREDIT CORPORATION	
Defendants	

MEMORANDUM AND ORDER

Debtors filed a Complaint on May 12, 1993, seeking a discharge in their Chapter 7 case of a student loan under 11 U.S.C. § 523(a)(8)(B). An answer was timely filed. The Answer revealed that the Nebraska Student Loan Program, Inc. is the true party in interest in this proceeding. The matter came on for trial on December 7, 1993. Based upon the evidence adduced at trial and the memoranda submitted by both parties, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtor, Melody L. Alldredge, obtained a student loan from Defendant, Loan Servicing Center, in 1989 in order to attend Kerr Business College. Debtor successfully completed her education at Kerr Business College, and thereafter, obtained employment in a related field. The current balance outstanding on the loan is $5,057.10, and the monthly payment due thereunder is approximately $60.00.

Debtors filed a voluntary petition under Chapter 7 of the Bankruptcy Code on January 6, 1992, and an order of discharge was entered in the case on July 9, 1992. On April 19, 1993, Debtors filed a motion to reopen their Chapter 7 case to allow them seek a discharge of Mrs. Alldredge's student loan. An order reopening the case was entered by this Court on April 21, 1993, and Debtors initiated this proceeding on May 12, 1993.

William Vernon Alldredge is currently employed as an apprentice embalmer at a funeral home earning a monthly net income of approximately $1,163.16. Mrs. Alldredge was employed in Savannah after completing her training at Kerr Business College making $7.75 per hour, but subsequently lost that job when she was diagnosed with ovarian cancer and could not to return to work for an extended period of time. Mrs. Alldredge has apparently recovered from her illness, has recently obtained part-time employment as a cashier at a Food Lion grocery store, and is attempting to find a second job or a job that will allow her to work full time.

Debtors' combined monthly income is currently around $1,431.16. Debtors have no children or other dependents, and their total monthly expenses are $1,428.43, broken down as follows:

Lot Rent	$45.00
Trailer	$323.06
Telephone	$70.00
Electricity	$125.00
Car Payment	$227.33
Car Insurance	$171.65
Home Insurance	$61.60
Life Insurance	$23.59
Liberty National Insurance	$18.20
Health Insurance	$23.00
Doctor Bill Payment	$10.00
PC Scanners	$10.00
Gas Station	$100.00
Groceries	$200.00
Appling Hospital	$20.00
TOTAL	$1,428.43

The automobile which Debtors use as their main source of transportation is a 1990 Nissan Sentra, and the $227.33 is the monthly payment called for under the loan agreement which Debtors reaffirmed as part of their Chapter 7 proceeding. Additionally, Debtors revealed on cross examination that a significant portion of the $70.00 phone bill is comprised of long distance charges.

Based upon the reduction in income which Debtors experienced after Mrs. Alldredge lost her job in Savannah, Debtors contend that payment of the student loan imposes an undue hardship upon them. As a result, Debtors seek a discharge of the loan pursuant to 11 U.S.C. 523(a)(8)(B). In support of this contention, Debtors point out that Defendants have failed to establish that the loan is an government-insured educational loan,

that its discharge was the primary purpose of their bankruptcy, or that the petition was filed in bad faith.

Defendants counter that the undue hardship standard contained in section 523(a)(8)(B) requires extremely exceptional circumstances, and, while payment of the loan may impose some hardship upon Debtors, they are capable of making the $60.00 per month payment without experiencing any undue hardship. Defendants also contend that Debtors' living expenses are higher than absolutely necessary, further supporting their position that the exceptional circumstances required under undue hardship are not present in this case. Finally, Defendants point out that Mrs. Alldredge's medical condition no longer prohibits her from working, and as a result, she is likely to obtain a higher paying job in the near future, enabling her to meet her obligations under the loan without any significant hardship.

CONCLUSIONS OF LAW

11 U.S.C. § 523(a)(8) provides:

> A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt--
>
> (8) For an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit or made under any program funded in whole or in part by a governmental unit or non-profit institution, or for an obligation to repay funds received as an educational benefit, scholarship, or stipend, unless--
>
> > (A) Such loan, benefit, scholarship, or stipend overpayment first became due before more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or
> >
> > (B) Excepting such debt from discharge under this paragraph will impose an undue

> hardship on the debtor and the debtor's dependents.

Although the overriding policy of the Bankruptcy Code is to provide debtors with a fresh start, *see* Local Loan Co. v. Hunt, 292 U.S. 234, 244, 54 S.Ct. 695, 699, 78 L.Ed. 1230 (1934), it is clear that Congress intended to make the discharge of student loans more difficult than the discharge of other debts. Brunner v. New York State Higher Educ. Services Corp., 831 F.2d 395 (2nd Cir. 1987). As a result, section 523(a)(8) excepts from discharge a debt which is based upon an educational loan when such a loan is made, insured or guaranteed by a governmental unit or non-profit institution, unless one of the following two conditions are present: (1) The debtor filed his or her bankruptcy petition more than seven years after the loan first became due; or (2) Excepting the debt from discharge will impose an undue hardship upon the debtor and the debtor's dependents.

The creditor bears the burden of proving by a preponderance of the evidence that debt falls within the general exception to discharge stated in section 523(a)(8), while the debtor bears the burden of proving by a preponderance of the evidence that the debt falls within either of the exceptions stated in subsections (A) and (B) of section 523(a)(8). *See* Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991); In re Ballard, 60 B.R. 673, 674 (Bankr. W.D.Va. 1986).

Debtors contend that Defendants have not made a sufficient showing that the student loan at issue is government-insured or guaranteed, and therefore, Defendants have not borne their burden of proving that the debt falls within the exception to discharge stated in section 523(a)(8). Debtors have not, however, presented any affirmative evidence of their own which would tend to prove that the loan is not of the type described in section

523(a)(8). Defendants, relying exclusively on the proof of claim, the pleadings in this proceeding, and the schedules filed by Debtors in their Chapter 7 case, argue that they have made a sufficient showing under section 523(a)(8).

The proof of claim for Mrs. Alldredge's student loan does not identify a creditor (the block entitled "Name of Creditor" is left blank), but does list "Sallie Mae" as the entity to receive all notices. Attached to the proof as a supporting document is the Higher Education Assistance Foundation's ("HEAF") copy of a document entitled "Supplemental Loan For Students (SLS) Application/Promissory Note," which Mrs. Alldredge apparently filled out when she applied for the loan. The HEAF's address and a note, instructing the lender to forward the copy to the HEAF, appear at the top of the application. Debtors listed the debt in their Chapter 7 schedules as a "Student Loan", and the creditor is identified as the "Loan Servicing Center". Finally, Debtors set forth in paragraph 4 of their Complaint that the HEAF has been assigned an interest in the loan, while in paragraph 6, they state that "Defendants contend the Plaintiffs are indebted to the Defendant, Loan Servicing Center, in the sum of . . . $5,057.10 for an educational loan made by Defendant to Plaintiff."

Based upon the fact that the HEAF has an interest in Mrs. Alldredge's loan, and taking judicial notice, under Rule 201 of the Federal Rules of Evidence, of the fact that the HEAF, a frequent litigant of student loan issues in this court, is the type of government agency or non-profit organization referred to in section 523(a)(8), I conclude that Defendants have made a *prima facie* showing, albeit a weak one, that the loan to Mrs. Alldredge is an educational loan guaranteed by a governmental or non-profit agency. Thereafter, since Debtors did not introduce one scintilla of evidence tending to prove that the loan is not of the type set forth in section 523(a)(8), I conclude that Defendants have

borne their burden of proving by a preponderance of evidence that the debt falls within the exception to discharge set forth in section 523(a)(8).

This conclusion shifts to the Debtors the burden of proving that the loan falls within one of the exceptions contained in subsections (A) and (B) of section 523(a)(8). There is no dispute that Debtors filed their Chapter 7 petition within seven years of Mrs. Alldredge's student loan coming due, and as a result, the exception stated in subsection (A) of section 523(a)(8) is not applicable to this case. Thus, the remaining issue in this case is whether Debtors have proven that excepting Mrs. Alldredge's student loan from discharge will impose an undue hardship upon Debtors.

A showing of mere hardship without showing *undue* hardship is not sufficient, *see* Ballard, 60 B.R. at 674, and whether a debtor will experience undue hardship must be determined on a case-by-case basis after a fact specific inquiry. *See* Andrews v. South Dakota Student Loan Assistance Corp., (In re Andrews), 661 F.2d 702 (8th Cir. 1981). In previous decisions dealing with the issue of undue hardship under section 523(a)(8)(B), this Court has adopted the three-part test set forth in In re Brunner, 46 B.R. 752 (S.D.N.Y. 1985) *aff'd* 831 F.2d 395 (2nd Cir. 1987)831 F.2d 395 (2nd Cir. 1987). *See* Linda Bruyette Gado Alexander v. Fla. Dept. of Educ., et.al. (In re Linda Bruyette Gado Alexander, Ch.7 Case No. 488-00306, Adv. Pro. No. 488-0065, slip op. at 6 (Bankr. S.D.Ga. June 14, 1989); Kelli Marie Cheshier v. Georgia Higher Education Assistance Corp (In re Kelli Marie Cheshier), Ch.7 Case No. 91-41090, Adv. Pro. No. 91-4086, slip op. at 7 (Bankr. S.D.Ga. March 2, 1992). This test requires a debtor seeking a discharge of a student loan under the undue hardship exception to satisfy each of the following three elements:

> (1) that the debtor cannot maintain, based on current income and expenses, a 'minimal' standard of living for herself and her

dependents if forced to repay the loans;

(2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and

(3) that the debtor has made good faith efforts to repay the loans.

Brunner, 831 F.2d at 396.

Although it is not the only test adopted by courts dealing with the undue hardship standard, the Brunner test has been, and continues to be, widely followed. *See e.g.*, In re Healey, 161 B.R. 389 (E.D.Mich. 1993); In re Conner, 89 B.R. 744, 747 (Bankr.N.D.Ill. 1988); In re Webb, 132 B.R. 199, 201 (Bankr. M.D.Fla. 1991); In re Ipsen, 149 B.R. 583, 585 (Bankr. W.D.Mo. 1992); In re Bakkum, 139 B.R. 680, 682 (Bankr. N.D.Ohio 1992); In re Connor, 83 B.R. 440, 445 (Bankr. E.D.Mich. 1988). Accordingly, this Court will continue to employ the Brunner test in determining whether a debtor has met his or her burden under the undue hardship standard of section 523(a)(8)(B).

In applying it to the facts of the instant case, I conclude that Debtors have not made a sufficient showing under either of the first two prongs of the test. Under the first prong, Debtors' have not shown that they will be unable to maintain a minimal standard of living for themselves and their dependents. Debtors have no dependents, and, while their monthly budget is by no means extravagant or excessive, it does reveal relatively large expenditures on items such as the $70.00 per month phone bill, of which a large portion is comprised of long distance billing, and the $227.033 per month car payment on a 1990 Nissan Sentra, the debt on which Debtors reaffirmed as part of their Chapter 7 case. The required monthly payment on the student loan is only $60.00 per month, $10.00 less than Debtors' average phone bill. It appears, therefore, that there is sufficient room in Debtors'

monthly expenses to allow them to service the monthly payments on the student loan and still maintain a 'minimal' standard of living.

Under the second prong of the test, there is absolutely no evidence that there are "additional circumstances" which will prevent Debtors from being able to repay the loan during the remainder of its term. Mr. Alldredge appears to have a reasonably stable job[1], and Mrs. Alldredge, who has now fully recovered from the serious illness that precipitated this bankruptcy, testified that she is able to work full time, that she recently obtained part-time employment as a cashier, and that she is looking for a second job or a job which will offer her full-time employment.

In sum, while payment of the student loan may impose a hardship upon Debtors in the near term, it does not appear to this Court that the hardship will be "undue" as required by section 523(a)(8)(B). "The fact that a debtor's budget may be tight for the foreseeable future is the norm rather than the exception." In re Bakkum, 139 B.R. at 682 (citation omitted). Moreover, if Mrs. Alldredge is able to obtain full-time employment, then repayment of the loan will be even less onerous in the future. Accordingly, I conclude that the debt which Debtors owe to the Nebraska Student Loan Program, Inc., as assignee from Defendants in this proceeding, is non-dischargeable under 11 U.S.C. § 523(a)(8).

O R D E R

[1] Although Mr. Alldredge has no legal liability for Mrs. Alldredge's student loan, his income is relevant in the determination of "undue hardship" in this case. The budget and income introduced by Debtors at trial was based upon the expenses and earnings of both Mr. and Mrs. Alldredge, and their case for a discharge under Section 523(a)(8)(B) is based solely upon these figures. As a result, the earning capacity of both Mr. and Mrs. Alldredge is relevant in determining the impact of the monthly payment required under the student loan. *See* In re Albert, 25 B.R. 98, 101 (Bankr. N.D.Ohio 1982); Matter of James, 4 B.R. 115, 119 (Bankr. W.D.Pa. 1980).

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the debt owed by Debtor, Melody Lynn Alldredge, to the Nebraska Student Loan Program, Inc., as assignee from Defendants in this proceeding, is hereby declared non-dischargeable under 11 U.S.C. Section 523(a)(8).

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Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of March, 1994.